

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Closed Captioning and Video Description) MM Docket No. 95-176
of Video Programming)
)
Implementation of Section 305 of the)
Telecommunications Act of 1996)
)
Video Programming Accessibility)

COMMENTS OF THE NATIONAL CABLE TELEVISION ASSOCIATION

The National Cable Television Association ("NCTA"), by its attorneys, hereby submits its comments in response to the Further Notice of Proposed Rulemaking in the above-captioned proceeding. NCTA is the principal trade association of the cable television industry in the United States. Its members include owners and operators of cable systems serving over 80 percent of the nation's cable television customers, and over 100 cable program networks. NCTA participated in the rulemaking proceeding in which the FCC adopted new closed captioning rules.¹

INTRODUCTION

The Commission's Further Notice seeks comments on how its rules can best ensure that emergency information is accessible to deaf and hard-of-hearing viewers. In particular, the Further Notice asks whether it is feasible to require video program providers to supply closed

¹ *In the Matter of Closed Captioning and Video Description of Video Programming*, MM Docket No. 95-176 (rel. Aug. 22, 1997) ("Report and Order").

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captions for emergency information. The Further Notice also asks whether captioning obligations for this category of information should commence prior to the first captioning benchmark in the year 2000, and whether all emergency information should be captioned regardless of whether the video provider has already reached its captioning benchmark or might be otherwise exempt from captioning requirements.

Recent action taken by the FCC will ensure increased accessibility of video programming, including emergency information, to the deaf and hard-of-hearing. The Commission should allow the steps it has just taken to promote the availability of accessible material to take hold prior to imposing any new requirements in this area.

ARGUMENT

I. THE COMMISSION SHOULD NOT CHANGE THE EXISTING CLOSED CAPTIONING RULES

Just six months ago, the Commission adopted comprehensive rules to implement the provisions of Section 713 of the Telecommunications Act of 1996. These closed captioning rules were issued after the FCC conducted a detailed inquiry into the current availability of captioners and the costs of increasing the amount of materials captioned.² The Further Notice raises several issues the Commission has already fully considered in these contexts, and has already appropriately resolved. Given that the rules have not yet even taken effect, it is premature to now reevaluate these judgments.

² *In the Matter of Closed Captioning and Video Description of Video Programming*, MM Docket No. 95-176 (rel. July 29, 1996) ("Captioning Report").

A. Requiring Real-Time Captioning of Emergency Information is Impractical

The Further Notice asks whether it is “feasible to require video program providers to supply closed captions for emergency information,”³ and proposes that “any textual presentation of emergency information programs should be required to incorporate substantially the entire text of the audio portion of the program.”⁴ But the Further Notice acknowledges that “by its very nature, emergency information is not typically programming that can be pre-recorded and captioned in advance of airing.”⁵ As a result, adopting a new obligation to ensure that such information must be captioned would “oblige providers to obtain real-time captioning services for such programs.”⁶ As the Commission is aware, however, requiring real-time captioning of news programming is not feasible at this time.

The recently-adopted captioning rules do not “adopt any limits on the methodology that can be used to create closed captioning and ... *permit* the use of ENR [Electronic Newsroom captioning].”⁷ The Commission concluded, based on its examination of the detailed record on this issue, that “the interests of persons with hearing disabilities and the video industry are served by permitting the use of ENR at this time,” and that “ENR will permit such programming to be

³ *Further Notice* at ¶9.

⁴ *Id.* at ¶12.

⁵ *Id.* at ¶9.

⁶ *Id.*

⁷ *Report and Order* at ¶84 (emphasis added).

made accessible under the transition schedule we adopt at a reasonable cost.”⁸ Use of ENR also could result in obtaining more captioned materials faster than would otherwise be possible.⁹ At the same time that it permitted ENR captioning, the Commission acknowledged some of the criticisms of ENR, and urged that video program providers script additional portions of their programming so that the topic of a segment (such as one provided through a live remote report) would be understandable to the deaf and hard-of-hearing.¹⁰

One of the reasons the Commission permitted the use of the ENR captioning method was the existing problems with the marketplace for real-time captioners.¹¹ After extensive study, the Commission found that there is a shortage of qualified real-time captioners, and the cost for their services ranged from \$120 to \$1200 an hour.¹² The Commission suggested that the permissibility of using ENR would be reevaluated after “the cost of real-time captioning declines, the availability of captioners increases, and the technology to provide live captioning from remote locations becomes more readily available.”¹³ But there is no evidence that this time has come.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 984.

¹¹ *Id.*

¹² *Id.* Gaining the skills necessary to perform these services will take years. *See id.* at n.255.

¹³ *Id.*

Given the absence of any suggestion that real-time captioning is any more feasible now than it was just a few months ago, imposing a requirement that video programmers provide in text format “substantially the entire text of the audio portion of information about local emergencies” cannot be achieved at this time. Many of the cable networks that might provide this type of local information operate nearly 24 hours every day. If real-time captioning of emergency information were required, these services would be forced to pay multiple captioners to be “on-call” around the clock. The costs such a requirement would impose could be enormous -- ultimately reducing the amount of information available to the viewing public.

**B. The Commission Should Not Modify its Transition Schedule or
 Exemptions to Carve Out the Captioning of Emergency Information**

The Further Notice seeks comment on several implementation issues with respect to captioning emergency information, including whether captioning should be required even prior to the first benchmark under the existing rules. The reasons for a transition apply equally in this case and should not be modified.

The Commission incorporated a transition schedule into its captioning rules because it realized that the goal of full accessibility of all new programming “cannot be reached immediately due to the limited number of available captioners and captioning services in existence, the increased demand for captioning which will be created by Section 713, and the cost of captioning.”¹⁴ The Commission also expressed concern that “requiring distributors to implement captioning immediately could reduce the availability of certain types of video programming in the near term, or pose implementation problems where distributors and

¹⁴ *Report at Order* at ¶ 41.

producers have entered into long term contracts which do not address the responsibility for captioning.”¹⁵ These issues have not evanesced in the 6 months since the captioning rules were adopted. These same problems prevent imposition of special expedited captioning deadlines for emergency information.¹⁶

The Further Notice also asks whether to change its transition period and mandate that emergency information should be captioned first.¹⁷ This additional layer of regulation is unnecessary. The Commission already has considered -- and rejected -- a proposal to impose an expedited timetable on the captioning of news and community affairs programming. It properly concluded that “[d]istributors can best determine what programs to caption first, and we expect that consumer demand, among other factors, will be taken into account in making these determinations.”¹⁸ There is no reason for the Commission to make the opposite assumption here.

The Further Notice also queries whether all emergency information should be captioned regardless of whether a network would otherwise be exempt from a captioning requirement. It would make little sense to require cable entities otherwise exempt from the captioning obligation

¹⁵ *Id.*

¹⁶ Moreover, while the transmission of emergency information is indeed important, the Commission has recognized in other contexts that practical considerations make a transition period necessary. For example, in the case of cable’s obligations under the Emergency Alert System (“EAS”), the FCC permitted certain smaller systems to come into compliance by the year 2002. *Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System*, FO Docket 91-301 (rel. Sept. 29, 1997) at ¶1 (“EAS Second Report and Order”). Larger systems were also provided a transition until December 31, 1998. *Id.*

¹⁷ *Further Notice* at ¶12.

¹⁸ *Report and Order* at ¶46.

to caption emergency information. These are precisely the type of entities that cannot be expected to have the facilities to caption.¹⁹ The Commission has already determined that the costs of captioning justify an exemption for these entities (either a categorical exemption for entities with less than \$3 million in gross annual revenues or a cap on expenditures at 2% of gross annual revenues.) Imposing a governmentally-mandated obligation to caption emergency information on these small entities would undermine the relief which they just obtained.

II. CABLE SYSTEMS ALREADY PROVIDE EMERGENCY INFORMATION IN A VISUAL FORMAT

There are several other ways in which emergency information already is or soon will be available to the deaf and hard-of-hearing. After it had adopted captioning rules, the FCC imposed revised EAS rules that incorporate an agreement among NCTA, CATA and the National Association for the Deaf that address the concerns of the deaf community regarding cable's EAS obligations.

The Further Notice suggests that EAS may not satisfy its concern here because the EAS system only applies to national emergencies.²⁰ But many cable systems are and will be transmitting state and local emergency information. These cable systems and many others that voluntarily participate in their state and local EAS operations have installed or will be installing equipment, consistent with the FCC's EAS rules, capable of providing all their viewers with audio and video messaging about local emergencies.

¹⁹ In addition to the costs of a stenocaptioner, a provider in order to air captions would also be required to purchase equipment at a cost of \$50,000 to \$75,000. *Captioning Report* at ¶50.

²⁰ *Further Notice* at ¶7 n.21.

The equipment purchased by larger cable systems to comply with the EAS rules, for example, will ensure that deaf viewers will have access to video emergency information on all channels shown on the system.²¹ The cable EAS rules require systems serving 10,000 or more customers to install this equipment by December 31, 1998. Systems with between 5,000 and 10,000 customers must do the same by October 1, 2002. And systems with fewer than 5,000 customers generally must install EAS equipment capable of providing audio alert messages on all channels, video interrupts, and audio and video EAS messages on one programmed channel.²²

In short, the Commission's new EAS rules go a long way toward ensuring the provision of emergency information by cable systems that is accessible to the deaf and hard-of-hearing. Additional rules are unnecessary.

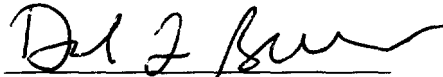
²¹ The Further Notice (at ¶15) seeks comments on a proposal submitted by Cal-TVA to require use of a second text channel for visual display of emergency messages. The Commission has already considered and resolved this requirement in the context of its cable EAS rulemaking.

²² *EAS Second Report and Order*, at ¶1.

CONCLUSION

For the foregoing reasons, the Commission should maintain its existing captioning rules and should not impose additional obligations on cable networks or operators with respect to the captioning of emergency information.

Respectfully submitted,



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